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SECRETARY OF LABOR,	:	
Complainant,	:	
	:	
v.	:	OSHRC
	:	Docket No. 97-0150
D'AMBRA CONSTRUCTION	:	
COMPANY, INC.,	:	
Respondent.	:	
	:	
	:	

Appearances:

Kevin E. Sullivan, Esq.
Office of the Solicitor
U.S. Department of Labor
For Complainant

Christopher J. Maxwell, Vice President
D'Ambra Construction Company, Inc.
Warwick, Rhode Island
For Respondent

Before: Administrative Law Judge Robert A. Yetman

DECISION AND ORDER

This proceeding arises under § 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et seq* (“the Act”) to review a citation issued by the Secretary of Labor pursuant to § 9(a) of the Act and a proposed assessment of penalty thereon issued pursuant to § 10(a) of the Act.

On January 13, 1997, Respondent D’Ambra Construction Company was issued one serious citation alleging a single violation of the standard set forth at 29 CFR 1926.65(b)(1). The citation reads as follows:

29 CFR 1926.651(b)(1): The estimated location of underground utility installations, such as sewer, telephone, fuel, electric, water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, was not determined prior to opening an excavation:

(a) Jobsite: The location of an underground gas line was not determined prior to excavation operations.

A penalty in the amount of \$4,000 was proposed by the Secretary.

Respondent filed a timely notice of contest and this matter was assigned for E-Z Trial proceedings pursuant to commission Rules 29 CFR 2200.200 *et seq.* A hearing was conducted on April 25, 1997 and in accordance with Commission Rule 209(f), a decision was issued from the bench affirming the citation as a serious violation and assessing a penalty in the amount of \$1,000. Findings of fact and conclusions of law as required by commission Rule 90(a) are set forth at transcript pages 118 to 125 attached hereto.

All findings of fact relevant and necessary to a determination of the contested issues have been made as required by Fed. R. Civ. P. 52(a). All proposed findings of fact and conclusions of law inconsistent with this decision are denied.

ORDER

Serious Citation No. 1, Item No. 1 alleging a violation of 29 CFR 1926.651(b)(1) is affirmed and a penalty in the amount of \$1,000 is assessed.

ROBERT A. YETMAN
Judge, OSHRC

Dated: _____
Boston, MA